

STATE OF TEXAS

COUNTY OF BEXAR

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**ECONOMIC DEVELOPMENT
LOAN AND GRANT AGREEMENT
OF THE CITY OF SAN ANTONIO**

This Economic Development Loan and Grant Agreement (hereinafter referred to as "this Agreement") is made and entered into by and between the City of San Antonio, a municipal corporation of the State of Texas (hereinafter referred to as "CITY"), acting by and through its City Manager or her designee, and SITE B DATA SERVICES, LLC, a Delaware limited liability company (hereinafter referred to as "SITE B") and together referred to as the "Parties.

WHEREAS, pursuant to Chapter 380 of the Texas Local Government Code, CITY is authorized to loan and grant municipal funds to promote state or local economic development and to stimulate business and commercial activity in the municipality; and

WHEREAS, in accordance with City Ordinance No. 100684, CITY created an economic development program for the purpose of making such loans and grants available; and

WHEREAS, SITE B is engaged in an economic development project that will be located within the city limits of San Antonio and will consist of converting an existing structure, being the Frio Street Building located at 911 North Frio, San Antonio, TX 78205 (the "Building"), into a data center specializing in providing bandwidth, storage, security and management of enterprise level data (the "Project"); and

WHEREAS, once completed, the Project is expected to eventually result in \$3.7 million in added value to and investment in real and/or personal property improvements and the creation of twenty (20) new jobs over the five (5) years following completion of the renovation of the Building that will pay between \$25,000.00-\$85,000.00 annually in salary plus health benefits; and

WHEREAS, SITE B is seeking an economic development loan and a grant from CITY for the purpose of defraying costs associated with the purchase of equipment in support of the Project, which equipment will then be utilized in operating the data center; and

WHEREAS, the CITY has identified Economic Development Incentive Funds available to provide a loan and a grant to SITE B for use in completing the Project; and

WHEREAS, the City Council of CITY has authorized the City Manager or her designee to enter into this Agreement with SITE B in accordance with City Ordinance No.2010-01-0014-0021, passed and approved on January 14, 2010, to loan and to grant funds to support the Project; **NOW THEREFORE:**

The Parties hereto severally and collectively agree, and by the execution hereof are bound, to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described:

SECTION 1. AGREEMENT PURPOSE

SITE B shall undertake the conversion of the Building from its existing use to a computer data center specializing in providing bandwidth, storage, security and management of enterprise level data. Plans currently call for the data center to be an approximately 27,000 sq. ft. facility with 15,000 sq. ft. serving as actual data center space. The Project will be executed in 5 phases and, once

completed, is expected to eventually result in \$3.7 million of added value to and investment in real and/or personal property and the creation of twenty (20) jobs within five (5) years of the completion of the renovation of the Building. The Project is anticipated to promote local economic development and to stimulate business and commercial activity in the City of San Antonio. The CITY is supporting the Project through this Economic Development Program Loan and Grant to provide funds to be used to purchase equipment for use in the Project. This economic incentive is being offered to SITE B to attract and retain high-impact companies that support the CITY's targeted industries.

SECTION 2. PROJECT REQUIREMENTS

A. SITE B shall invest a minimum of THREE MILLION DOLLARS AND NO CENTS (\$3,000,000.00) in real and/or personal property improvements of the property described in Attachment I. This amount is exclusive of any funding that the CITY may provide under this Agreement.

B. SITE B shall seek to invest additional funds if available to reach a goal of approximately THREE MILLION SEVEN HUNDRED THOUSAND DOLLARS AND NO CENTS in total investment.

C. SITE B shall operate a data center in the Building that will provide bandwidth, storage, security and management of enterprise level data ("Business Activity") for a period of at least NINE (9) Years.

D. SITE B shall create and retain twenty (20) full-time jobs on the property within the first five (5) years following completion of the renovations to the Building and must retain these full-time jobs for an additional FOUR (4) year period following the initial FIVE (5) years of creation.

E. SITE B shall begin operation of the Project on or before August 16, 2010 and in no case later than February 16, 2011.

F. SITE B shall comply with all applicable federal, state and local laws and regulations, and shall develop and operate the Project in accordance with the terms and conditions of this Agreement and Attachment I.

SECTION 3. ECONOMIC DEVELOPMENT PROGRAM LOAN

A. **Economic Development Program Loan.** CITY has agreed to provide SITE B with an Economic Development Program Loan in the amount of ONE HUNDRED AND THREE THOUSAND DOLLARS AND 0 CENTS (\$103,000.00) ("Loan Funds"). The Loan Funds shall be used only for the purpose of purchasing needed equipment to be used in conjunction with the Project. CITY and SITE B agree that repayment of the Loan Funds shall be secured during the Term of this Agreement by imposition of a purchase money interest lien on all equipment that is purchased with Loan Funds. In the event that the value of the equipment subject to the purchase money interest lien granted by SITE B to CITY is 90% or less than the amount of the Loan Funds advanced by CITY to SITE B, CITY and SITE B agree that a secondary lien shall be afforded to CITY on the Building, legally described on Attachment I hereto, subject, however, to SITE B's securing approval for such second lien from any primary lienholder as may be applicable. Such lien shall not include any rights of foreclosure and shall be subordinate to other purchase money liens and secured loans that may exist now or in the future.

B. **Loan Disbursement.** Promptly following approval of this Agreement by a duly authorized City Ordinance, but in no event later than thirty (30) days following the execution of this Agreement, the CITY will make available to SITE B an Economic Development Program Loan in the total amount of Loan Funds, to be advanced to SITE B in one disbursement. Said Loan Funds shall be disbursed by

CITY upon SITE B providing to CITY a list of identified equipment totaling no more than ONE HUNDRED AND THREE THOUSAND DOLLARS AND 0 CENTS (\$103,000.00) in value (the "Identified Equipment") for which the Loan Funds shall be used. Upon disbursement of the Loan Funds, SITE B shall procure such equipment and provide invoice and receipts for the purchased Identified Equipment to CITY and shall file all necessary paperwork requested by CITY to secure CITY's purchase money interest security lien against the Identified Equipment, including any filings required by the Uniform Commercial Code. SITE B shall record such paperwork in the appropriate public records as directed by CITY.

C. **Repayment of Loan Funds.** Subject to the provisions of Section 3(F) below, SITE B shall be obligated to repay CITY the Loan Funds disbursed by the CITY under its Economic Development Loan Program in two annual installments of FIFTY ONE THOUSAND FIVE HUNDRED DOLLARS AND 0 CENTS (\$51,500.00) plus Accrued Interest (as defined below), if any, in accordance with the following schedule:

SCHEDULE OF REPAYMENT*

JANUARY 31, 2016	\$51,500.00
JANUARY 31, 2017	\$51,500.00 plus Accrued Interest

*This Schedule of Repayment is not subject to change except in case of written agreement between CITY and SITE B and subject to force majeure extension under Section 24 below.

D. **Payment of Principal and Accrued Interest.** In addition to the principal amount of the Economic Development Program Loan specified in SECTION 3(B) above, SITE B shall also pay interest on the outstanding amount advanced under the Economic Development Program Loan beginning on January 31, 2016 ("Accrued Interest"). Interest on the outstanding loan amount shall be calculated commencing January 1, 2016 at a fixed-rate equal to the CITY's average annual yield calculated for the CITY's four quarterly investment reporting periods immediately preceding the date of each annual repayment. Such fixed interest rate shall be in effect beginning January 1, 2016. In no event shall any interest, including the Accrued Interest, accrue on the outstanding balance of the Economic Development Program Loan prior to January 31, 2016. The amount of any Accrued Interest payment shall be referred to as an "Interest Payment".

E. **Sufficient Amounts.** Each payment made pursuant to SECTIONS 3(C) and 3(D) above shall be sufficient to pay the total amount of principal and Accrued Interest (if any) on the Loan Funds becoming due and payable upon that date.

F. **Loan Forgiveness.** Notwithstanding the provisions of SECTIONS 3(C) and 3(D) above, SITE B shall only be obligated to repay the Loan Funds by making Loan Payments and Interest Payments required by SECTION 3(C) and 3(D) should SITE B fail to achieve the following:

1. The Project reaching EIGHTY-PERCENT (80%) operation capacity utilizing at least THREE (3) Megawatts of energy by January 31, 2016 (provided, however, that this requirement shall be void should City Public Service be unable to deliver or make available to the Project the 3 Megawatts of energy by such date);
2. SITE B creating and maintaining TWENTY (20) full-time jobs for the FIVE (5) year period that ends on January 31, 2016.

3. SITE B remaining in the Building for the FIVE (5) year period that ends on January 31, 2016.
4. SITE B providing to CITY all information necessary for CITY to determine SITE B's compliance with this Agreement in accordance with Section 8 below.

Should SITE B meet all obligations as set forth in this Section 3(F)(1) through (4) as determined by CITY by January 31, 2016, the repayment provisions in Sections 3(C) and (D) shall be extinguished and the Loan Funds shall be considered Grant Funds (as further described below) and shall be treated as such under Section 5 of this Agreement.

G. **Obligation to Repay the Program Loan.** Should CITY determine that SITE B failed to achieve the requirements of Section 3(F) above and is required to repay the Loan Funds to CITY, CITY shall notify SITE B in writing of such determination on or before January 1, 2016, and SITE B shall have a thirty day period of time after receipt of the notice to cure any failure or contest the determination with the CITY. If SITE B fails to cure the failure to achieve such requirements to CITY's reasonable satisfaction after such thirty day period, then the obligation of SITE B to make the repayment of the Loan Funds shall be absolute and unconditional, irrespective of any defense or any rights of set-off, recoupment or counterclaim it might otherwise have against the CITY, and during the term of this Agreement, SITE B shall pay all payments required to be made on account of this Agreement (which payments shall be net of any other obligations of SITE B to the CITY) as prescribed in SECTION 3(C) and 3(D) free of any deductions and without abatement, diminution or set-off, until such time as the principal of and Accrued Interest on the Loan Funds shall have been fully paid or provision for the payment thereof shall have been made.

H. **Prepayment.** SITE B may prepay the amount of the Economic Development Program Loan, in whole or in part, prior to the scheduled payment dates or the expiration of the dates specified in Section 3(C) of this Agreement, without penalty.

SECTION 4. LOAN DEFAULT AND CITY'S REMEDIES

A. **Loan Default Events.** Should any one of the following events occur and continue after the date of Schedule of Repayment as specified in Section 3(C) above and any applicable notice and cure periods, it shall constitute a Loan Default Event:

1. Failure of SITE B to make any Loan Payment required by SECTIONS 3(C) or 3(D) when due; and/or
2. Failure of SITE B to observe and perform in any material respect any covenant, condition or agreement on its part required to be observed or performed under this Agreement or other written agreements with the CITY following the expiration of sixty (60) days written notice to cure (or any longer period of time as may be applicable under this Agreement); and/or
3. The dissolution or liquidation of SITE B or the filing by SITE B of a voluntary petition in bankruptcy, or failure by SITE B to promptly cause to be lifted any execution, garnishment or attachment of such consequence as will impair SITE B's ability to carry on its obligations under this Agreement; and/or
4. The commission by SITE B of any act of voluntary or involuntary bankruptcy under any state or federal law; and/or

5. The admittance of SITE B, in writing, of its inability to pay its debts generally as they become due, or a receiver, trustee or liquidator of SITE B shall be appointed in any proceeding brought against SITE B and shall not be discharged within ninety (90) days after such appointment.

B. **Remedies to CITY upon a Loan Default Event.** Should SITE B cause or allow a Loan Default Event to occur and it shall continue following notice by CITY and SIXTY (60) days to cure (or a longer period of time as may be applicable under this Agreement), CITY may pursue the remedies set forth in SECTIONS 16 and 17 below.

D. **No Remedy Exclusive.** No remedy herein conferred upon or reserved to the CITY is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute. NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT TO THE CONTRARY, IN NO EVENT SHALL EITHER PARTY HERETO BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, CONSEQUENTIAL, INCIDENTAL OR INDIRECT LOSSES OR DAMAGES (IN TORT, CONTRACT OR OTHERWISE) UNDER OR IN RESPECT OF THIS AGREEMENT.

SECTION 5. ECONOMIC DEVELOPMENT PROGRAM GRANT.

A. **Economic Development Program Grant.** In addition to Loan Funds as described in Section 3 above, CITY is providing SITE B with an Economic Development Program Grant in the amount of NINETY-SEVEN THOUSAND DOLLARS (\$97,000.00) ("Grant Funds"). The Grant Funds shall be used for the purpose of purchasing equipment to be used in conjunction with the Project. CITY and SITE B agree that the recapture of the Grant Funds shall be secured solely by a purchase money interest security lien on the equipment that is purchased with Grant Funds. In the event that the value of the equipment subject to the purchase money interest lien granted by SITE B to CITY is 90% or less than the amount of the Grant Funds advanced by CITY to SITE B, City and SITE B agree that a secondary lien shall be afforded to City on the Building, legally described on Attachment I, subject, however, to SITE B's securing approval for such second lien from any primary lienholder as may be applicable. Such lien shall not include any rights of foreclosure and shall be subordinate to other purchase money liens and secured loans.

grant B. **Grant Disbursement.** Promptly following approval of this Agreement by a duly authorized City Ordinance, but in no event later thirty (30) days following the execution of this Agreement, the CITY will make available to SITE B an Economic Development Program Grant in the total amount of NINETY-SEVEN THOUSAND DOLLARS AND 0 CENTS (\$97,000.00) ("Grant Funds"), to be advanced to SITE B in one disbursement. Said ~~(loan)~~ shall be disbursed by CITY upon SITE B providing to CITY a list of identified equipment totaling at least NINETY-SEVEN THOUSAND DOLLARS AND 0 CENTS (\$97,000.00) in value (the "Additional Equipment") for which the Grant Funds shall be expended. Upon disbursement of Grant Funds, SITE B shall procure the Additional Equipment and provide invoice and receipts for the purchased Additional Equipment to CITY all necessary paperwork requested by CITY to secure CITY's purchase money security interest lien against the Additional Equipment, including any filings required by the Uniform Commercial Code. SITE B shall record such paperwork in the appropriate public records as directed by CITY.

C. **Recapture of Program Grant Funds Years 1 through 5.** Should SITE B, on or before January 31, 2016:

1. Fail to complete the Project; or

2. Fail to reach Eighty-Percent (80%) of operational capacity using at least THREE (3) MegaWatts of energy (provided, however, that this requirement shall be void should City Public Service be unable to deliver or make available to the Project the 3 Megawatts of energy by such date); or
3. Fail to create and maintain TWENTY (20) full-time jobs; or
4. Sell all or a substantial portion of its assets without CITY's consent, but only if such sale results in a failure to comply with items 2, 4, 5 or 6 herein; or
5. Relocate its business from the Building; or
6. Fail to keep adequate records necessary for the CITY to determine if SITE B is in compliance with this Agreement; or
7. Commit a Loan Default Event that remains uncured after any applicable cure period set forth in this Agreement; then

CITY shall have the right to recapture all Grant Funds heretofore advanced either by: (a) obtaining repayment of all Grant Funds from SITE B after written request delivered to SITE B, which written request will afford SITE B a 30 day opportunity to either correct the failure resulting in the recapture right or to pay back any Grant Funds previously advanced, or (b) by exercising its rights relative to the purchase money security interest lien on all personal property purchased with Grant Funds following the 30 day period set forth in Subsection (a) herein.

D. Recapture of Program Grant Funds Years 6 through 9. If SITE B commits any of the acts set forth below in Years Six (6) through Nine (9), with the 6th year commencing on February 1, 2016, then CITY shall be entitled to recapture a percentage of the Grant Funds heretofore advanced to SITE B, including those Loan Funds that have become Grant Funds under Section 3(F), dependent upon the year in which SITE B commits act or acts, as follows:

Year 6	80% of Grant Funds
Year 7	60% of Grant Funds
Year 8	40% of Grant Funds
Year 9	20% of Grant Funds

In other words, if SITE B commits any of the acts set forth below in Year 6, then SITE B must return 80% of the Grant Funds advanced by the CITY to date; in Year 7, 60% of the Grant Funds advanced to date; and so forth. No recapture right exists after Year 9, which year ends on January 31, 2020. Upon the end of the Term of this Agreement, CITY shall release any and all liens it holds to secure recapture of the Grant Funds, all in form satisfactory to SITE B, and record such releases in the public records as may be appropriate.

The recapture of Grant Funds in Years Six (6) through Nine (9) shall be limited to instances where SITE B has:

1. Failed to reach Eighty-Percent (80%) of operational capacity using at THREE (3) MegaWatts of energy; provided, however, that this requirement shall be void should City Public Service be unable to deliver or make available to the Project the 3 Megawatts of energy capacity by such date; or

2. Failed to maintain TWENTY (20) full-time jobs; or
3. Sold all or a substantial portion of its assets without CITY's consent, but only if such sale results in a failure to comply with items 2, 4, 5 or 6 in Subsection C above; or
4. Relocated its business from the Building.

SECTION 6. AGREEMENT PERIOD

This Agreement shall commence upon the effective date listed in this Agreement and terminate on January 31, 2020 unless extended by a mutual agreement in writing (the "Term").

SECTION 7. DEPARTMENT OBLIGATIONS

A. CITY will make an Economic Development Program Loan of ONE HUNDRED THREE THOUSAND DOLLARS AND ZERO CENTS \$103,000.00) available to SITE B as described in Section 3(A) of this Agreement and shall also make available an Economic Development Program Grant in the amount of NINETY-SEVEN THOUSAND DOLLARS AND ZERO CENTS \$97,000.00) to SITE B as described in Section 5(A) of this Agreement.

B. CITY will not be liable to SITE B or other entity for any costs incurred by SITE B other than those which CITY is obligated to reimburse pursuant to the terms of this Agreement.

SECTION 8. RETENTION AND ACCESSIBILITY OF RECORDS

A. SITE B shall maintain the fiscal records and supporting documentation for expenditures of funds associated with this Agreement. SITE B shall retain such records, and any supporting documentation, for the period required for record retention or by any other applicable laws and regulations.

B. SITE B shall, following reasonable advance written notice from the CITY, give the CITY, its designee, or any of their duly authorized representatives, access during normal business hours to and the right to examine all books, accounts, records, audit reports, reports, files, documents, written or photographic material, videotape and other papers, things, or property belonging to or in use by SITE B pertaining to the Economic Development Loan (the "Records"). The CITY's access to SITE B's books and records will be limited to information needed to verify that SITE B is and has been complying with the terms of this Agreement and to verify advances made by the CITY and re-payments made by SITE B and to verify that the proceeds of the Economic Development Loan are or were used in connection with the development and operation the Project. Any information that is not required by law to be made public shall be kept confidential by CITY. SITE B shall not be required to disclose to the CITY any information that by law SITE B is required to keep confidential. Should any good faith dispute or question arise as to the accuracy of the data provided, the CITY reserves the right to require SITE B to obtain an independent firm to verify the information. This certified statement by an independent firm shall be provided at the sole cost of SITE B unless the independent firm confirms that the information as provided by SITE B is accurate, in which case the CITY will bear the cost of the independent firm. The rights to access the Records shall continue as long as the Records are retained by SITE B. Failure to provide reasonable access to the Records to authorized CITY representatives shall give the CITY the right to suspend or terminate this Agreement as provided for in Section 16 and 17 below, or any portion thereof, for reason of default. All Records shall be retained by SITE B for a period of five (5) years after all performance requirements are achieved for audit purposes until such audits or other administrative, civil or criminal matters including, but not limited to, investigations, lawsuits, administrative inquiries and open record requests are completed. SITE B agrees to maintain the Records in an accessible location and to provide

citizens reasonable access to the Records if required by the Texas Public Information Act on the same terms as the Records are made available to the CITY as set forth above. All of the above notwithstanding, the CITY and the citizens shall have no right to access any confidential or proprietary records of SITE B, including but not limited to the ownership and capital structure of SITE B.

SECTION 9. MONITORING

A. CITY reserves the right to confirm SITE B's compliance with the terms and conditions of this Agreement by monitoring, subject to the requirements of SECTION 8 above. CITY will provide SITE B with a written report of the monitor's findings. If the monitoring report notes deficiencies in SITE B's performances under the terms of this Agreement, the monitoring report shall include a listing of requirements for the correction of such deficiencies by SITE B and a reasonable amount of time in which to attain compliance. Failure by SITE B to take action specified in the monitoring report may be cause for suspension or termination of this Agreement, in accordance with Sections 16 and 17 herein.

B. SITE B shall provide to CITY a statement with reasonable supporting information evidencing the creation of and filling of the number of jobs required by this Agreement.

SECTION 10. CONFLICT OF INTEREST

A. SITE B shall use reasonable business efforts to ensure that no employee, officer, or individual agent of SITE B shall participate in the selection, award or administration of a subcontract supported by funds provided hereunder if a conflict of interest, real or apparent, would be involved. Such conflict of interest would arise when: (1) the employee, officer, or individual agent; (2) any member of his or her immediate family; (3) his or her partner; or, (4) any organization which employs, or is about to employ any of the above, has a financial or other interest in the firm or person selected to perform the subcontract and the relationship calls for payments to be made to such subcontractor on terms which are greater than those which are customary in the industry for similar services conducted on similar terms. SITE B shall comply with Chapter 171, Texas Local Government Code as well as the CITY's Code of Ethics.

SECTION 11. NONDISCRIMINATION AND SECTARIAN ACTIVITY

A. SITE B shall ensure that no person shall, on the ground of race, color, national origin, religion, sex, age or handicap, be excluded from participation in, be denied the benefits of, be subjected to discrimination under, or be denied access to any program or activity funded in whole or in part with funds made available under this Agreement.

B. None of the performances rendered by SITE B under this Agreement shall involve, and no portion of the funds received by SITE B under this Agreement shall be used in support of, any sectarian or religious activity, nor shall any facility used in the performance of this Agreement be used for sectarian instruction or as a place of religious worship.

C. SITE B shall include the substance of this Section 11 in all agreements associated with the funds made available through this Agreement unless such agreements were entered into before the date of this Agreement.

SECTION 12. LEGAL AUTHORITY

A. Each party assures and guarantees to the other that they possess the legal authority to enter into this Agreement, to receive/deliver the funds authorized by this Agreement, and to perform their obligations hereunder.

B. The person or persons signing and executing this Agreement on behalf of each party or representing themselves as signing and executing this Agreement on behalf of a party, do hereby guarantee that he, she or they have been duly authorized to execute this Agreement on behalf of that party and to validly and legally bind that party to all terms, performances and provisions herein set forth.

C. CITY will have the right to suspend or terminate this Agreement in accordance with Sections 16 and 17 herein if there is a dispute as to the legal authority of either SITE B, or the person signing this Agreement, to enter into this Agreement, any amendments hereto or failure to render performances hereunder.

SECTION 13. LITIGATION AND CLAIMS

A. SITE B shall give CITY immediate notice in writing of any action, including any proceeding before an administrative agency, filed against SITE B arising out the performance of any subcontract hereunder. Except as otherwise directed by CITY, SITE B shall furnish immediately to CITY copies of all pertinent papers received by SITE B with respect to such action or claim. SITE B shall notify the CITY immediately of any legal action filed against the SITE B or any subcontractor of which SITE B is actually aware, or of any proceeding filed under the federal bankruptcy code. SITE B shall submit a copy of such notice to CITY within 30 calendar days after receipt. No funds provided under this Agreement may be used in the payment of any costs incurred from violations of or settlements relating to, or failure to comply with, federal and state regulations. The above notwithstanding SITE B is not required to notify CITY of claim or litigation which arises out of SITE B's operations on the Project, including without limitation, landlord/tenant disputes, personal injury actions (slip and falls), and other operational activities or relationships.

B. CITY and SITE B acknowledge that CITY is a political subdivision of the State of Texas and is subject to, and complies with, the applicable provisions of the Texas Tort Claims Act, as set out in the Civil Practice and Remedies Code, Section 101.001 et. seq., and the remedies authorized therein regarding claims and causes of action that may be asserted by third parties for accident, injury or death.

C. This Agreement shall be interpreted according to the Constitution and the laws of the State of Texas. Venue of any court action brought directly or indirectly by reason of this Agreement shall be in Bexar County, Texas.

SECTION 14. ATTORNEY'S FEES

A. In the event either party defaults under any of the provisions of this Agreement, and should the non-defaulting party employ attorneys or incur other expenses for the collection of the payments due under this Agreement or the enforcement of performance or observance of any obligation or agreement on the part of the defaulting party herein contained, the defaulting party agrees to pay to the non-defaulting party reasonable fees of such attorneys and such other expenses so incurred by the non-defaulting party.

SECTION 15. CHANGES AND AMENDMENTS

A. Except as provided in Section 15(C) below, any alterations, additions, or deletions to the terms of this Agreement shall be by amendment hereto in writing and executed by both parties to this Agreement upon CITY approval and authorization of SITE B.

B. It is understood and agreed by the parties hereto that performances under this Agreement shall be rendered in accordance with the laws and rules governing the Economic Development Program as set forth in Texas Local Government Code Chapter 380, and the terms and conditions of this Agreement.

C. Any alterations, additions, or deletions to the terms of this Agreement required by changes in state law or regulations are automatically incorporated into this Agreement without written amendment hereto, and shall become effective on the date designated by such law or regulation.

SECTION 16. SUSPENSION

A. Notwithstanding the provisions of Chapter 2251 of the Texas Government Code, in the event SITE B commits a Loan Default Event, CITY shall provide SITE B with written notification as to the nature of the Loan Default Event. CITY shall grant SITE B a sixty (60) day period from the date of the CITY's written notification to cure any Loan Default Event. Should SITE B fail to cure any Loan Default Event within this period of time, the CITY may, upon written Notice of Suspension to SITE B, suspend this Agreement in whole or in part by withholding further payments to SITE B or accelerate the due date of the repayment of the loan, and prohibit SITE B from incurring additional obligations of funds under this Agreement. Such Notice of Suspension shall include: (1) the reasons for such suspension; (2) the effective date of such suspension; and, (3) in the case of partial suspension, the portion of the Agreement to be suspended.

B. In the case of a Loan Default Event that occurs for causes beyond SITE B's reasonable control, which cannot with due diligence be cured within such sixty (60) day period, the CITY may, in its reasonable discretion, extend the cure period provided that SITE B shall: (1) immediately upon receipt of Notice of Suspension advise CITY of SITE B's intention to institute all steps necessary to cure such default and the associated time frame; and (2) institute and thereafter prosecute to completion with reasonable dispatch all steps necessary to cure same.

C. A suspension under this Section 16 may be lifted at the reasonable discretion of the CITY upon a showing of compliance with or written waiver by CITY of the term(s) in question.

D. With the exception of payment for work in progress or materials ordered prior to receiving a Notice of Suspension, CITY shall not be liable to SITE B or to SITE B's creditors for costs incurred during any term of suspension of this Agreement unless CITY improperly exercised its right of suspension.

SECTION 17. TERMINATION

A. CITY shall have the right to terminate this Agreement in the event SITE B commits a Loan Default Event that remains uncured past any applicable cure period at any time before the date of completion specified in Section 5 of this Agreement. CITY will provide SITE B with written notification as to the nature of the Loan Default Event and grant SITE B a sixty (60) day period from the date of the CITY's written notification to cure any Loan Default Event. Should SITE B fail to cure any Loan Default Event within this period of time, the CITY may, as its sole and exclusive remedies, upon issuance to SITE B of a written Notice of Termination, either suspend this Agreement pursuant to the provisions of SECTION 16 above, or terminate this Agreement in whole or in part, in which case the CITY may either: (1) withhold further payments to SITE B; or (2) accelerate the repayment of the loan. Such notification shall include: (1) the reasons for such termination; (2) the effective date of such termination; and, (3) in the case of partial termination, the portion of the Agreement to be terminated.

B. In the case of a Loan Default Event that occurs for causes beyond SITE B's reasonable control, which cannot with due diligence be cured within such sixty (60) day period, the CITY may, in its

reasonable discretion, extend the cure period provided that SITE B shall: (1) immediately upon receipt of Notice of Termination advise CITY of SITE B's intention to institute all steps necessary to cure such default and the associated time frame; and (2) institute and thereafter prosecute to completion with reasonable dispatch all steps necessary to cure same.

C. Except as provided in Section 17(A), the Economic Development Program Loan may be terminated in whole or in part only as follows:

1. By the CITY (with the written consent of the SITE B), in which case the two parties shall agree upon the termination conditions, including the repayment of funds, the effective date, and, in the case of partial termination, the portion to be terminated; or
2. By SITE B upon written notification to the CITY, setting forth the reasons of such termination, a proposed pay-back plan of any funds loaned, the effective date, and, in the case of partial termination, the portion to be terminated. However, if, in the case of partial termination, the CITY determines in its sole discretion that the remaining portion of the award will not accomplish the purpose for which the award was made, the CITY may terminate the award in its entirety under SECTION 17(A).

D. Notwithstanding any exercise by CITY of its right of suspension under Section 16 of this Agreement, or of early termination pursuant to this SECTION 17, SITE B shall not be relieved of the obligation to repay Loan Funds under this Agreement (except as specified in SECTION 3(F) above) or any liability to CITY for actual damages due to CITY by virtue of any breach by SITE B of any agreement with CITY.

SECTION 18. SPECIAL CONDITIONS AND TERMS (RESERVED)

SECTION 19. SUBAGREEMENTS

A. SITE B shall use reasonable business efforts to ensure that the performance rendered under all subcontracts complies with all terms and provisions of this Agreement as if such performance were rendered by SITE B.

B. SITE B, in subcontracting any of the performances hereunder, expressly understands that in entering into such subcontracts, CITY is in no way liable to SITE B's subcontractors.

C. SITE B assures and shall obtain assurances from all of its subcontractors where applicable, that no person shall, on the grounds of race, creed, color, disability, national origin, sex or religion, be excluded from, be denied the benefit of, or be subjected to discrimination under any program or activity funded in whole or in part under this Agreement.

D. As subcontracts and supplier agreements become necessary to carry out the requirements of this Agreement, SITE B covenants to comply with the CITY's SBEDA Program, currently identified under Ordinance No. 100873, and as amended.

SECTION 20. DEBARMENT

By signing this Agreement, SITE B certifies that it will not knowingly pay any funds provided under this Agreement to any party which is debarred, suspended or otherwise excluded from or ineligible for participation in assistance programs by the CITY.

SECTION 21. RIGHTS UPON DEFAULT

It is expressly understood and agreed by the Parties hereto that any right or remedy provided for in this Agreement shall not preclude the exercise of any other right or remedy under any other agreements between SITE B and the CITY or under any provision of law, nor shall any action taken in the exercise of any right or remedy be deemed a waiver of any other rights or remedies. Failure to exercise any right or remedy hereunder shall not constitute a waiver of the right to exercise that or any other right or remedy at any time.

SECTION 22. NON-ASSIGNMENT

This Agreement is not assignable without the written consent of CITY and the passage of a City Ordinance approving such assignment. Any other attempt to assign the Agreement shall not relieve SITE B from liability under this Agreement and shall not release SITE B from performing any of the terms, covenants and conditions herein. SITE B shall be held responsible for all funds received under this Agreement. Notwithstanding the foregoing, SITE B may assign the Agreement, upon consent of City, in conjunction with a sale or merger of the company so long as the entity that will succeed to SITE B's rights under this Agreement assumes in writing all of SITE B's obligations hereunder.

SECTION 23. ORAL AND WRITTEN AGREEMENTS

All oral and written agreements between the Parties to this Agreement relating to the subject matter of this Agreement that were made prior to the execution of this Agreement have been reduced to writing and are contained in this Agreement.

SECTION 24. AUTHORIZED RELIEF FROM PERFORMANCE (*Force Majeure*)

CITY may grant temporary relief from performance of this Agreement if SITE B is prevented from compliance and performance by an act of war, order of legal authority, act of God, or other unavoidable cause not attributed to the fault or negligence of the SITE B. The burden of proof for the need for such relief shall rest upon the SITE B. To obtain release based upon *force majeure*, SITE B must file a written request with the CITY. Should CITY grant temporary relief to SITE B, it shall in no case relieve SITE B from any repayment obligations as specified in Section 3(B) and 3(C) of this Agreement, though the Schedule of Repayment set forth in SECTION 3(C) may be modified in writing by the Parties to extend repayment.

Signatures appear on next page.

WITNESS OUR HANDS, EFFECTIVE as of JANUARY 28, 2010:


Accepted and executed in two duplicate originals on behalf of the City of San Antonio pursuant to Ordinance Number 2010-01-0014- 0021, dated January 14, 2010, and SITE B pursuant to the authority of its _____.

CITY OF SAN ANTONIO,
a Texas Municipal Corporation



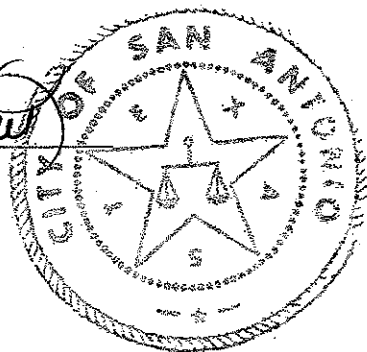
For
Sheri L. Souley
CITY MANAGER

SITE B DATA SERVICES, LLC,
a Delaware corporation

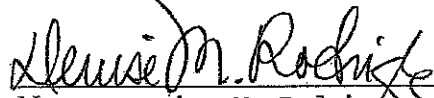
By: 
Name: Fernando Reyes
Title: President

ATTEST:

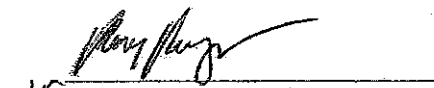

Leticia Vacek
CITY CLERK



ATTEST:


Name: Denise M. Rodriguez
Title: Notary Public

APPROVED AS TO FORM:


Michael D. Bernard
CITY ATTORNEY

ATTACHMENTS: Attachment I SITE B's Property Description

**FIRST AMENDMENT TO ECONOMIC DEVELOPMENT LOAN AND GRANT
AGREEMENT**

BETWEEN THE CITY OF SAN ANTONIO AND SITE B DATA SERVICES, LLC

This First Amendment to Economic Development Loan and Grant Agreement (this "First Amendment") is entered into as of December 15, 2016 (the "Effective Date"), by and between the City of San Antonio ("CITY"), a municipal corporation governed by the laws of the State of Texas, and Site B Data Services, LLC ("SITE B"), a Delaware limited liability company. Together, CITY and SITE B may be referred to herein as the "Parties."

RECITALS

A. CITY and SITE B entered into that certain Economic Development Loan and Grant Agreement (the "Agreement") authorized by City Ordinance No. 2010-01-0014-0021, passed and approved on January 14, 2010.

B. As of December 31, 2015, SITE B has failed to: (-1-) meet the required number of Full-Time Jobs; (-2-) meet the required capital investment; (-3-) meet the required electricity usage; and (-4-) repay the Loan Funds as and when required under the terms of the Agreement.

C. The Parties seek to amend the terms and conditions of the Agreement as of the Effective Date of this First Amendment and affirm that all other provisions of the Agreement remain in full force and effect.

AGREEMENT

NOW THEREFORE, the Parties hereby agree as follows:

1. **Definitions.** All capitalized terms used in this First Amendment without definition herein shall have the meanings ascribed to such terms in the Agreement.

2. **Amendment.** Notwithstanding anything contained in the Agreement, Site B hereby agrees to the following amended terms to the Agreement:

A. Full-Time Jobs. By the December 31, 2017, and continuing thereafter until January 1, 2021, Site B shall create and maintain at least 5 full-time jobs at the Building. Site B may count full-time contractor(s) as full-time employees, provided such contractor(s) meet the definition of a full-time job as follows: (-1-) is a non-temporary job; (-2-) will provide at least 2,080 straight-time hours of employment a year to a single employer; (-3-) there is a written contract between such contractor(s) and Site B to provide services at the Building; (-4-) such contractor(s) must not be temporarily assigned to Site B's data center operation; (-5-) must meet wage requirements set forth in the Agreement; and (-6-) such contractor(s) must be provided an opportunity to participate in an employer sponsored benefit plan.

B. Capital Investment. The cumulative capital investment required to be made by Site B at the Building, exclusive of any funding the CITY has provided under the Agreement, shall be Seven Hundred Fifty Thousand and 00/100 Dollars (\$750,000.00), with credit being given for a proportionate share of the assessed value of real property occupied by Site B's data operations at the Building.

C. Energy Use. Site B shall reach and maintain at least an eighty percent (80%) load factor to a minimum of 2.4MW of energy consumption monthly (i.e., at least an average 200 KW per month).

D. Liens. CITY will have a first lien on all the data center equipment based on the inventory list attached hereto and incorporated herein as **Exhibit A**, and a lien in favor CITY on the Building should the value of data center equipment be 90% or less than the amount of the advanced loan funds. In connection with such lien(s), Site B shall, within 30 days after the Effective Date of this First Amendment, file all necessary paperwork requested by CITY to secure CITY's lien against the data center equipment and Building, including, without limitation, Uniform Commercial Code filings and a Second Deed of Trust on the Building, and shall record these filings and Deed of Trust in the appropriate public records as directed by CITY.

E. Non-Compliance. Failure to meet and maintain the terms set forth in this First Amendment by December 31, 2017 and throughout the remainder of the Agreement term will result in, without further notice or cure right, termination of the Agreement and the recapture of Grant Funds by CITY as follows:

1. Recapture of grant funds:
 - a. By the end of 2017 – 100% (recapture payments of \$8,083.33 each)
 - b. By the end of 2018 – 80% (recapture payments of \$6,466.66 each)
 - c. By the end of 2019 – 60% (recapture payments of \$4,850.00 each)
 - d. By the end of 2020 – 40% (recapture payments of \$3,233.33 each)

SITE B shall be obligated to repay CITY the Grant Funds disbursed by CITY under its Economic Development Grant Program in twelve (12) semi-annual installments as set forth above, with the first payment due on the February 1st following such termination, and continuing through the repayment term on each August 1st and February 1st, until paid in full.

F. Repayment of Loan Funds. SITE B shall be obligated to repay CITY the Loan Funds disbursed by CITY under its Economic Development Loan Program in twelve (12) semi-annual installments of Eight Thousand Five Hundred Eighty-three and 33/100 Dollars (\$8,583.33) plus Accrued Interest (as defined in the Agreement), if any, in accordance with the following schedule:

SCHEDULE OF REPAYMENT*

January 31, 2018	\$8,583.33
June 30, 2018	\$8,583.33 plus Accrued Interest
January 31, 2019	\$8,583.33 plus unpaid Accrued Interest
June 30, 2019	\$8,583.33 plus unpaid Accrued Interest
January 31, 2020	\$8,583.33 plus unpaid Accrued Interest
June 30, 2020	\$8,583.33 plus unpaid Accrued Interest
January 31, 2021	\$8,583.33 plus unpaid Accrued Interest
June 30, 2021	\$8,583.33 plus unpaid Accrued Interest
January 31, 2022	\$8,583.33 plus unpaid Accrued Interest
June 30, 2022	\$8,583.33 plus unpaid Accrued Interest
January 31, 2023	\$8,583.33 plus unpaid Accrued Interest
June 30, 2023	\$8,583.33 plus unpaid Accrued Interest

This Schedule of Repayment is not subject to change except in the case of written agreement between CITY and SITE B and subject to force majeure extension under Section 24 of the Agreement.

G. Loan Forgiveness. SITE B shall only be required to repay the Loan Funds by making Loan Payments and Interest Payments set forth above should SITE B fail to achieve the requirements set forth in Paragraph 2. A., 2. B., and 2 C of this First Amendment by December 31, 2017.

3. **No Other Changes.** Except as specifically set forth in this First Amendment, all of the terms and conditions of the Agreement shall remain the same and are hereby ratified and confirmed. The Agreement shall continue in full force and effect and along with this First Amendment shall be read and construed as one instrument.

4. **Entire Agreement; Waiver.** This First Amendment constitutes the final, complete and exclusive statement between the parties to this First Amendment pertaining to the amendment of the terms and conditions of the Agreement as set forth herein, supersedes all prior and contemporaneous understandings or agreements of the parties pertaining to the matters set forth herein, and is binding on and inures to the benefit of their respective heirs, representatives, successors, successors-interest, and assigns. No Party has been induced to enter into this First Amendment by, nor is any Party relying on, any representation or warranty not expressly set forth in this First Amendment. Any agreement made after the date of this First Amendment is ineffective to modify, waive, or terminate this First Amendment, in whole or in part, unless that agreement is in writing, is signed by the parties to this First Amendment, and specifically states that agreement modifies this First Amendment.

5. **Choice of Law.** This First Amendment shall be construed in accordance with and governed by the laws of the State of Texas.

6. **Counterparts.** This First Amendment may be executed in any number of counterparts, but all such counterparts shall together constitute but one instrument. In making proof of this First Amendment it shall not be necessary to produce or account for more than one

counterpart signed by each party hereto by and against which enforcement hereof is sought. A copy of a signature received through telefax or email transmission shall bind the party whose signature is so received as if such signature were an original.

Signatures appear on next page.


WITNESS HEREOF, the parties hereto have executed in triplicate originals this First Amendment as of the Effective Date first written above.

CITY OF SAN ANTONIO,
a municipal corporation

fr. 

Sheryl L. Sculley
City Manager

SITE B Data Services, LLC
a Delaware limited liability company



Name: Fred Reyes
Title: President

ATTEST:



Leticia Vacek
City Clerk



APPROVED AS TO FORM:



City Attorney

Exhibit: Exhibit A (Equipment)

Exhibit A (Equipment)

Invoice	Units	Price Per	Invoice Amount	Description	Serial Numbers
PEI Invoice # 000580					
	2	\$21,200	\$42,400.00	Libert's Deluxe System 3.30 Ton Upflow Computer Room Air Conditioners w/ humidification and RC coil Model # V16BDAAGCP6	534343-001 534343-002
	2	\$6,904	\$13,808.00	Honeywell 3 Pin Condenser Model # H89D334022	V05D9791 V05D9792
	2	\$850	\$1,700.00	Libert's open Console Mt. B Model # 41B3410	
EATON Invoice # 345373	1	\$48,678	\$48,678.00	Powerware 9200-180 UPS	EC364C8801
	1			Powerware 9200-180 Battery Cabinet	F361DAAD9
Power Protection Services # 088625	40	\$259	\$10,360.00	Battery UPS12-450AH	
Summit Invoice #0001897466	1	\$26,195.66	\$26,195.66	Cutler Hammer Switchboard Cutline blade	
Summit Invoice #0001728909	6	\$1,653	\$9,918.00	Cutler Hammer Transient Voltage Surge Suppressor Model # SP0120480V3E	
Summit Invoice #0001669530	1	\$3,861.21	\$3,861.21	Cutler Hammer Transient Voltage Surge Suppressor Model # SP0250480V3E	67941
Summit Invoice #0001668531	1	\$3,861.21	\$3,861.21	Cutler Hammer Transient Voltage Surge Suppressor Model # SP0250480V3E	67930
Summit Invoice #0001554894	2	\$2,763	\$5,526.60	Cutler Hammer 75 KVA Dry Type Transformer Model #P40B001742CH01	A08108005 A08106461
Summit Invoice #0001897466	1	\$6,739	\$6,739.19	Cutler Hammer 150 KVA Dry Type Transformer Model # P40B001742CH01	A08105193
Summit Invoice #0001893341				Cutler Hammer Switch Panels	
	1	1,368.17	\$1,368.17	P401201742CH01	
	1	2978.55	\$2,978.55	P40B001742CH01	
	1	2978.55	\$2,978.55	P40B001742CH01	
	1	1,876.9	\$1,876.90	P20B001742CH01	
	1	855.19	\$855.19	E1730000	
	1	\$471.89	\$471.89	P40B001742CH01	
	1	886.3	\$886.30	E1730001	
	1	2130.57	\$2,130.57	P40B001742CH01	
Black Box Invoice # 548-002889	22	\$800	\$17,600.00	Select Plus Data Cabinet Model # B04040	80801676 80800388 80800220 80800048 80801088 80801382 80801404 80800580 80801716 80801717 80800544 80801112 80801411 80800590 80801101 80801402 80801104 80801420 80801114 80801105
Black Box Invoice # 548-002751	2	\$800.00	\$1,600.00	Select Plus Data Cabinet	

AN ORDINANCE 2016-12-15-1007

**APPROVING A FIRST AMENDMENT TO THE CHAPTER 380
ECONOMIC DEVELOPMENT PROGRAM GRANT AND LOAN
AGREEMENT WITH SITE B DATA SERVICES, LLC.**

* * * * *

WHEREAS, the City Council approved a Chapter 380 Economic Development Grant and Loan Agreement (the "Agreement") with Site B Data Services, LLC ("Site B") in 2010; and

WHEREAS, the Agreement provided for the City to provide \$107,000.00 in an economic development loan and \$97,000.00 in an economic development grant to Site B so long as Site B invested a minimum of \$3 million in the property and created at least twenty (20) full-time jobs; and

WHEREAS, due to industry changes, Site B has requested an amendment to the Agreement to reduce the amount of investment to \$750,000.00 and the job creation requirement to five (5); and

WHEREAS, the City finds that amending the Agreement will assist in keeping Site B operational in a targeted section of the City; **NOW THEREFORE**:

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. The City Council hereby approves the terms and conditions of the First Amendment to the Economic Development Program Grant and Loan Agreement with Site B to provide for a decrease in investment to \$750,000.00 and a decrease in the number of required full-time jobs to 5.

SECTION 2. The City Manager or a designated representative is authorized to execute an amendment to the Agreement as approved in Section 1 above. The final Amendment shall be filed with this Ordinance upon execution.

SECTION 3. This Ordinance shall be effective on and after the tenth (10th) day after passage hereof.

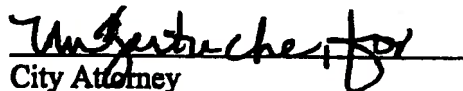
PASSED AND APPROVED this 15th day of December, 2016.


M A Y O R
Ivy R. Taylor

ATTEST:


Leticia M. Vicek, City Clerk

APPROVED AS TO FORM:


City Attorney

Attachment

B. Capital Investment. The cumulative capital investment required to be made by Site B at the Building, exclusive of any funding the CITY has provided under the Agreement, shall be Seven Hundred Fifty Thousand and 00/100 Dollars (\$750,000.00), with credit being given for a proportionate share of the assessed value of real property occupied by Site B's data operations at the Building.

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counterpart signed by each party hereto by and against which enforcement hereof is sought. A copy of a signature received through telefax or email transmission shall bind the party whose signature is so received as if such signature were an original.

Signatures appear on next page.

Exhibit A
(Equipment)

[illegible]